

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NETCHOICE,

Plaintiff,

v.

JONATHAN SKRMETTI, in his official capacity as the Tennessee Attorney General & Reporter,

Defendant.

Case No. 3:24-cv-01191

**DEFENDANT’S RESPONSE TO PLAINTIFF’S
NOTICE OF SUPPLEMENTAL AUTHORITY**

NetChoice notifies this Court of a judgment that not even NetChoice was willing to defend in its preliminary-injunction briefing. *See* Notice of Supp. Auth. (Doc. 40) (discussing *Free Speech Coal. v. Skrmetti*, 2024 WL 5248104 (W.D. Tenn. Dec. 30)). When Tennessee argued that the law challenged here was constitutional as applied to “[s]ocial-media platforms that host users’ pornographic content without verifying users’ age,” PI-Opp. (Doc. 26) at 10, NetChoice *agreed* that these applications were lawful, *see* PI-Reply (Doc. 35) at 6 (“The handful of purportedly lawful applications of the Act that Defendant raises (*e.g.*, pornography websites, none of which are members) do not change this fact.”). And those lawful applications are just some of the many that NetChoice concedes. *See, e.g.*, PI-Reply 13 n.10 (apparently agreeing that the law is constitutional for all “younger minors” under the age of 13).*

NetChoice understood then that decisions like *Free Speech Coalition v. Skrmetti* are likely incorrect. When a court in Texas granted a similar preliminary injunction, the Fifth Circuit reversed in relevant part. *Free Speech Coal. v. Paxton*, 95 F.4th 263 (5th Cir.), *cert. granted*, 144 S.Ct. 2714 (2024). The Supreme Court then allowed Texas’s age-verification law to come into force, with no noted dissents.

* Stranger still, *Free Speech Coalition* faulted Tennessee for *not* requiring age verification on “social media websites” like “Reddit or X,” which it said were rife with “pornography.” 2024 WL 5248104, at *15-16. The law here—with the same effective date as the law there—does precisely that.

Free Speech Coal. v. Paxton, 144 S.Ct. 1473 (2024) (denying stay). Following the Supreme Court, the Seventh Circuit then stayed a similar preliminary injunction out of Indiana. *Free Speech Coal. v. Rokita*, 2024 WL 3861733 (7th Cir. Aug. 16). Tennessee is seeking a similar stay now, and the Sixth Circuit has ordered emergency briefing that will finish early next week. *See Free Speech Coal. v. Skremetti*, CA6-Docs. 6-7, No. 24-6158.

Even if it weren't likely to be reversed, *Free Speech Coalition v. Skremetti* would be distinguishable. Unlike the age-verification requirement there, the age-verification requirement here governs only the creation of new accounts. *See* PI-Opp. 12-13. And unlike the law there, the law here has now gone into effect. *See* T.C.A. §47-18-5701 (effective date January 1, 2025). That result is a consequence of NetChoice's lengthy delay in seeking a preliminary injunction. *See* PI-Opp. 21-22. And it means that NetChoice is asking this Court to *change*, rather than preserve, the status quo. Its claimed irreparable harms from the cost of coming into compliance are now moot, disproven, or both. *See* PI-Opp. 21-23.

In the end, the law here is now in effect; and contra NetChoice, the sky has not fallen. NetChoice is now asking this Court to disrupt the status quo and to follow a nonbinding decision from the Western District that might soon be stayed. This Court should instead deny NetChoice's preliminary-injunction motion.

Date: January 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

On January 1, 2025, I e-filed this document with the Court, which automatically emailed everyone requiring notice.

/s/ Cameron T. Norris